

E-filed on 5/12/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BRAD BOTHELL,

Plaintiff,

v.

PROGRESSIVE CAMPAIGNS; JOHN
MICHAEL; BOB ANGELO DOE;
SECRETARY DOE and DOES 1-100,

Defendants.

No. C-08-02198 RMW

ORDER DISMISSING THE COMPLAINT
WITH LEAVE TO AMEND AND
DEFERRING RULING ON MOTION TO
PROCEED IN FORMA PAUPERIS

[Re Docket No. 3]

On April 24, 2008, plaintiff Brad Bothell, proceeding *pro se*, filed a complaint alleging that he signed a contract to turn in signatures to defendant Progressive Campaigns (dba Initiatives Plus). He alleges that he turned in \$6000 worth of signatures to defendant John Michael on or about April 24 or April 25, 2004, but that John Michael did not mail payment. Bothell asserts that he has been unable to pick up the check, and alleges that Michael has not returned his calls for the last four years. Bothell seeks to sue defendants for breach of contract.


Plaintiff asks the court to permit him to proceed *in forma pauperis* in this action. *In forma pauperis* status requires two findings: a finding of indigence and a finding that the underlying claim

1 has some merit. *See Bradshaw v. Zoological Society of San Diego*, 662 F.2d 1301 (9th Cir. 1981).
 2 Reviewing the complaint in conjunction with the motion to proceed *in forma pauperis*, the court has
 3 determined that it does not have subject matter jurisdiction over the plaintiff's claims. *See Cannon v.*
 4 *Hawaii Corp. (In re Hawaii Corp.)*, 796 F.2d 1139, 1141 (9th Cir. 1986) (federal courts are required
 5 to consider the presence or absence of subject matter jurisdiction *sua sponte*).

6 This is the third complaint and request to proceed *in forma pauperis* by plaintiff this court
 7 has recently considered. In each case, the court has lacked subject matter jurisdiction. Plaintiff's
 8 claim for breach of contract is within the state court's jurisdiction, and not ordinarily within the
 9 federal court's jurisdiction unless there is a separate basis for federal jurisdiction (that the actions
 10 allegedly occurred within the federal court's geographical jurisdiction is not enough). Here as
 11 before, plaintiff does not plead any facts that would suggest a federal claim that would provide the
 12 court with federal question jurisdiction under 28 U.S.C. § 1331. Nor is there any indication that the
 13 plaintiff is a citizen of a different state from the defendant and that the amount in controversy meets
 14 the requirements for federal diversity jurisdiction under 28 U.S.C. § 1332. Thus, this court is unable
 15 to adjudicate the claims that plaintiff brings before it. For that reason, plaintiff's claims are without
 16 merit and he does not qualify to proceed *in forma pauperis*.

17 Because the court lacks jurisdiction over plaintiff's claims as stated, it must dismiss plaintiff's
 18 complaint. Plaintiff shall have 20 days to amend his complaint to state a claim upon which this
 19 court may grant relief. The court will defer ruling on plaintiff's *in forma pauperis* application until
 20 after he has filed an amended complaint.

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 23 DATED: 5/12/08


 24 RONALD M. WHYTE
 25 United States District Judge
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1 A copy of this order was mailed on 5/12/08 to:

2 **Counsel for Plaintiff:**

3 Brad Bothell
4 80 S. Market Street
5 San Jose, CA 95113
6 PRO SE

7 **Counsel for Defendant(s):**

8 No appearance

9 Counsel are responsible for distributing copies of this order to co-counsel, as necessary.
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